

his or her favour by a will or an *ohaki*. The remaining parts of the appeal were dealt with by a decision of this Court given on the 26th May last.

It is urged at this hearing that the deceased made a will omitting any mention of his interest in the Owhaoko Block which was then under hearing, and that therefore it could not have been intended by Te Awaawa to go to Pura Rora. The will itself is not forthcoming, and the evidence of its contents is contradictory, but we cannot see what difference it makes in this case. If any mention was made of the Owhaoko Block in the will it appears to be admitted that the devise would have been in favour of Pura Rora, the adopted child. If no mention was made of that interest we must conclude that, so far as that interest was concerned, Te Awaawa died intestate, and therefore the succession must be decided according to Native custom.

As to the *bona fide* adoption of Pura Rora by Te Awaawa, that appears to have been proved in other cases referred to at this hearing, and we are satisfied that proof is ample, and also that the adoption was such as to exclude all except "near relatives" from sharing in the succession, and that the persons now appealing are not such "near relatives" of the deceased as to entitle them to a share in the interests in those blocks.

The argument that an adopted child has not a claim to the whole of the land unless the adopting parent has so devised by a will or an *ohaki* is one that cannot be entertained. The right by adoption does not require to be supported by a will or an *ohaki*; if it did, adoption in itself would have no effect.

The appeal is dismissed; and of the sum of £10 deposited as security for costs, the sum of £4 will be paid as costs to the respondents, and £6 paid into the Public Account as costs of Court in addition to the ordinary fees for hearing.

Mr. P. E. Baldwin for appellants.

Messrs. Sainsbury and A. L. D. Fraser for respondents.

NATIVE APPELLATE COURT.—AWARUA No. 1, KOHURAU No. 2, AND RANGIPO-WAIU No. 1.
(Before Chief Judge DAVY and Judge SCANNELL.)

Judgment.

APPEAL of Iraia Karauria from decision of Native Land Court appointing Whairiri Renata successor to the interest of Renata Kawepo.

The Court does not consider it necessary to go into the question whether or not the adoption of Whairiri Renata by Renata Kawepo was of such a nature as might under certain circumstances have entitled him to share in the lands of Renata Kawepo, because we hold that, even admitting the adoption to its fullest extent, its value as conferring any right to succession is entirely a question of intention on the part of the predecessor. In the present instance any presumption of intention in that respect which might otherwise be deducible from the fact of the adoption is, in our opinion, conclusively negated by the terms of the will of Renata Kawepo. Nor can we admit any right on the part of the Native Land Court in dealing with this question to take into account the fact that the provision made by the testator for the benefit of Whairiri has, as is alleged, to a large extent failed. That such might be the case was a contingency which the testator had expressly considered and provided for.

The order appealed from is therefore annulled, and the Court orders that the appellant (Iraia Karauria) and Airini Tonore, Pani Karauria, and Erena Karauria, as next-of-kin of Renata Kawepo, are the persons entitled to succeed to his interest in the lands the subject of this appeal. The amount deposited as security for costs to be refunded to the depositor.

Messrs. T. W. Lewis and A. L. D. Fraser for appellants.

Messrs. Williams and Loughnan for respondent.

NATIVE APPELLATE COURT.—OWHAOKO D No. 6 AND RANGIPO-WAIU.

Judgment.

AN appeal is made from a decision given by the Native Land Court on the 7th August, 1895, appointing a successor to the interest of Te Awaawa, deceased, in each of these blocks, and the grounds of appeal generally are—(1.) That, these blocks being held under a Land Transfer title, at the time Te Awaawa died, the succession must be determined according to the law of New Zealand, and not according to Native custom. (2.) That Pura Rora, the successor appointed, was not a *bona fide* adopted child of the deceased, and consequently has no claim as such according to Native custom; and also that an adopted child has not a claim to the whole of the land unless the adopting parent has so devised in his or her favour by a will or an *ohaki*.

With regard to the first part of the appeal, the Act of 1894, subsection (4) of section 14, gives the Court jurisdiction "to determine any successor," and the interpretation clause of the said Act says, "'Successor' means the person who on the death of any Native is, according to Native custom, or, if there be no Native custom applicable to any particular case, then according to the law of New Zealand, entitled to the interest of such Native in any land or personal property."

The scope of "The Native Land Court Act, 1894," with regard to Native tenure is to bring all lands which have heretofore passed the Court under the Land Transfer Act, where Land Transfer title or Crown grants have not already issued; and in a large majority of all the Native Land Court Acts which have been passed hitherto the succession and hereditaments were to be determined by the law of New Zealand, as nearly as it could be reconciled to Native custom and usage, making Native custom paramount in any conflict between it and the law of New Zealand.

The Act of 1894 has not altered the law of succession in this respect, and the fact of the title to the land being a Land Transfer certificate cannot be held to be a particular case where Native custom is not applicable.